children under eighteen. *Held,* that the Workmen's Compensation Law was exclusive, and adult brothers and sisters could not recover under the Code of Civil Procedure. Bartlett, C. J., and Chase, J., *dissenting.*

The legislature may make the recovery under the Workmen's Compensation Law exclusive and deny a recovery on all other actions. Alien dependents were unable to recover under an act limiting compensation to residents of the United States, although they would have had a good cause of action at common law. *Gregutis v. Waclark Wire Works* (1914) 86 N. J. L. 610. An act, reciting the weaknesses of the common law in actions by employees against employers and withdrawing all phases of the premises from private controversy and making the employer liable without negligence, removed the rights of the employee against third parties. *Peet v. Mills* (1913) 76 Wash. 437. But this doctrine has been repudiated by the federal courts. *Meese v. Northern Pac. Ry. Co.* (1914) 211 Fed. 254, reversing 206 Fed. 222. The cases may possibly be reconciled on the ground that the action was against an officer of the employing corporation, and consequently not against a third party. A statute declaring that if the employee accepts compensation under this act, such action shall constitute a release to the employer of all claims or demands at law, does not prevent the mother from suing the employer at common law for the loss of the son's services. *King v. Viscoloid Co.* (1914) 219 Mass. 420. In New York the courts have already begun to restrict the force of the word "exclusive." They have held that this clause applies only to employers and does not prevent an action against third parties. *Lester v. Otis Elevator Co.* (1915) 153 N. Y. S. 1058. They have also held that the term "exclusive" does not apply to schedules not covered by the act and that the right to recover for an injury to an ear, an injury not covered by the schedules, remained as it was at common law. *Shenneck v. Clover Farms Co.* (1915) 154 N. Y. S. 423. The lower courts of New York, whose reasoning the dissenting judges adopt in the principal case, would extend this doctrine one step farther. They maintain that the legislature intended the remedies in the Workmen's Compensation Act to be exclusive only as regards those who were there provided for and that there was no intention to remove any common-law remedy without substituting another, so that the plaintiff might maintain an action under the Code of Civil Procedure. The majority adopt a stricter construction, declaring the language of the act to be clear, and that if any injustice is caused thereby, the remedy is by an amendment by the legislature and not by a strained construction of the act.

J. E. H.

MASTER AND SERVANT—WORKMEN'S COMPENSATION ACT—INJURY ARISING OUT OF EMPLOYMENT.—FOLEY V. HOME RUBBER CO. (1917) 99 ATL. (N. J.) 624.—The plaintiff's husband, a traveling salesman, with the knowledge of defendant, his employer, engaged passage on the Lusitania on a visit to the London office of defendant company. On the voyage the steamer was destroyed by a submarine. *Held,* that this was an accident "arising out of the employment," for which the plaintiff was entitled to

recover compensation on the ground that the defendant was chargeable with knowledge that England and Germany were at war.

The words "arising out of the employment" as found in the Workmen's Compensation Act are descriptive of the character and quality of the accident and refer to origin or cause. *Hills v. Blair* (1914) 182 Mich. 20; *Fitzgerald v. Clark & Son* [1908] 2 K. B. 796. The criterion is not that other persons are exposed to the same dangers but rather that the employment renders the servant peculiarly subject to the danger. *Symmonds v. King* (1915) 8 B. W. C. C. 189. The principal case follows those courts which hold that the words "arising out of" make it a condition precedent to the right to recover compensation that the accident shall have resulted from a risk which might have been contemplated by a reasonable person as incidental to the employment. *Bryant v. Fissell* (1913) 84 N. J. L. 72; *Collins v. Collins* [1907] 2 I. R. 104; *Blake v. Head* (1912) 106 L. T. R. 822; *Coronado Beach Co. v. Pillsbury* (1916) 158 Pac. (Cal.) 212. The danger of the destruction of the ship by a submarine was one to be reasonably apprehended by the defendant. When it is considered that the purpose of the act is to relieve a social condition, it is difficult to see why so much stress is laid upon the subjective test. Whether the business caused the injury depends on the sequence of events and, from that point of view, the test should be an objective one.

R. L. S.

SPECIFIC PERFORMANCE—OBLIGATION TO CONVEY REAL ESTATE—DECEDENT'S ESTATE.—THOMAS V. HEDDON (1916) 114 N. E. (IND.) 218.—One McNaughton leased premises to Thomas with the option to purchase for $17,000 at the expiration of the lease. McNaughton died testate but without providing for conveyance. Subsequently the option was exercised and tender made both to the executor and the heirs. Then this action was brought for specific performance. The Indiana statute (Burns' Ann. St., secs. 2897-2900) provides that where a decedent has contracted for conveyance, his executor may file a petition to have a commissioner appointed to convey and thereafter maintain an action for the purchase money. *Held,* that under this statute it was the duty of the executor to petition for conveyance by a commissioner when there is doubt as to who should receive the payment and that the lessee might secure the appointment of a commissioner by filing a bill for specific performance.

The Indiana statute does not expressly cover the case of an option. It provides for cases of title-bonds or contracts. Furthermore, if the statute did include options, rights under it would not extend to the lessee, they being conferred expressly on the executor. Peculiarly enough, the statutes of most states provide only for exactly the reverse situation, being thereby a sort of legal complement to the Indiana statute. (1902) Mass. Rev. Laws, chap. 148, sec. 1; (1911) Wis. Sts., secs. 3907-3912; (1905) Minn. Rev. Laws, secs. 3777-3780; (1910) Okl. Rev. Laws, secs. 6410-6414; (1911) Tex. Rev. Civ. Sts., arts. 3518-3520. In the principal case the whole transaction may be regarded as a single contract, tender of purchase money being